Former cases have held a Syrian, an Armenian, and a Parsee entitled to naturalization as "free white persons." See 23 HARV. L. REV. 561; 24 HARV. L. REV. 150. The principal case follows from those. The argument is that the phrase employed by the statute is merely a "catch-all" for others than negroes and Indians; that Mongolians and Asiatics have been excluded by judicial construction; and hence that all Europeans and Asiatics not allied to those races are eligible. See 23 HARV. L. REV. 561.

BILLS AND NOTES — SET-OFF BY SURETY MAKER OF PROMISSORY NOTE AGAINST INSOLVENT BANK. — During insolvency proceedings against the defendant bank, the appellant, a surety co-maker of a promissory note payable to the bank, filed an intervening petition seeking to have her deposit set off in payment of the note. The principal maker of the note was solvent. *Held*, that the petition be denied. *Knaffle* v. *Knoxville Banking & Trust Co.*, 159 S. W. 838 (Tenn.).

The court in the principal case assumes that at law the maker of a note is absolutely liable thereon irrespective of a suretyship relation, and such has been the construction placed by the courts on §§ 119, 120, and 192 of the Negotiable Instruments Law. *Vanderford* v. *Farmers' Bank*, 105 Md. 164, 66 Atl. 47; *Cellers* v. *Meachem*, 49 Ore. 186, 89 Pac. 426; *contra*, *Fullerton Lumber Co.* v. *Snouffer*, 139 Ia. 176, 117 N. W. 50. See 26 HARV. L. REV. 366. This construction seems questionable, and certainly the result is undesirable as doing away with the established common-law suretyship defenses. See BRANNAN, NEGOTIABLE INSTRUMENTS LAW, 117; 11 Am. Law Notes, 105. If the above construction were adopted in the principal case, the appellant, being absolutely liable, should be allowed the well-recognized right to an equitable set-off against an insolvent creditor. See WATERMAN, SET-OFF, RECOUPMENT, AND COUNTER CLAIM, § 396. But the court holds that, irrespective of the effect of the statute on the liabilities of the parties at law, a court of equity can consider the true relation between the parties. *Building and Engineering Co.* v. *Northern Bank*, 206 N. Y. 400, 99 N. E. 1044. This reasoning seems unsound, as statutes are to be considered as framed with reference to equitable as well as legal doctrines, unless otherwise expressly stated. See *Edwards* v. *Edwards*, 2 Ch. D. 291, 297; ENDLICH, INTERPRETATION OF STATUTES, 446. It seems probable that the court, in using this language, is indirectly disagreeing with the above generally accepted construction. But if the common construction is incorrect and the common-law doctrines of suretyship are not abolished, the fact that the supreme courts of six states have decided otherwise, and that three states, Wisconsin, Illinois, and Kansas, have refused to adopt the sections in question in their present form, would seem to make an amendment of these sections imperative. See 26 HARV. L. REV. 594–596.

CARRIERS — PASSENGERS: DUTY TO ACCEPT AND CARRY PASSENGERS — RIGHT OF SICK PASSENGERS TO DEMAND TRANSPORTATION IN BAGGAGE CAR. — The plaintiff's intestate offered himself to the defendant for transportation to Atlanta where he was to undergo an operation for appendicitis. He was upon a cot and demanded the right to be placed in the baggage car. The defendant refused, and the deceased was taken into the smoking car, in which it was impossible to place him in other than a cramped position. This resulted in the bursting of the appendix, causing his death. *Held*, that the plaintiff may not recover. *Central of Georgia Ry. Co.* v. *Fleming*, 79 S. E. 369 (Ct. App., Ga.).

The plaintiff argued that the defendant owed a duty to the deceased to carry him in the baggage car. There is almost no authority on the question. Where a person is unattended and so seriously ill as to require medical aid, it was held that the carrier might refuse transportation altogether. *Connors* v. *Cunard Steamship Co.*, 204 Mass. 310, 90 N. E. 601. There, however, the carrier's re-

fusal did not deprive the applicant of proper medical treatment, while in the principal case it probably did. It has been said that the carrier is under a duty to transport an insane man, but not in the baggage car. See *Owens* v. *Macon & B. R. Co.*, 119 Ga. 230, 232, 46 S. E. 87, 88. Surely the carrier has some duty to transport such unfortunates. It is an extraordinary duty, however, and its performance should be left to the carrier's discretion; and if this discretion is reasonably exercised, the carrier should be under no liability.

CONSENT — EFFECT IN PARTICULAR ACTIONS — RECOVERY AGAINST SALOON KEEPER UNDER CIVIL DAMAGE LAWS. — The plaintiff voluntarily became intoxicated. While in that condition he lost control of a team which he attempted to drive and suffered serious injuries. He now sues the liquor seller, his wife having previously recovered for loss of support. *Held*, that he may recover. *Henkel* v. *Boudreau*, 143 N. W. 236 (Neb.).

The plaintiff's husband died from the effects of liquor sold him by the defendant. It was proved that the plaintiff herself furnished the money with which the liquor was bought. She now sues the saloon keeper for destroying her means of support. *Held*, that she may recover. *Colman* v. *Loeper*, 143 N. W. 295 (Neb.).

Both of these actions were brought under a statute providing that whoever sells liquor "shall pay all damages that the community or individuals may sustain in consequence of such traffic." COBBEY'S ANN. STATUTES, § 7165. Under the Nebraska decisions the defense *volenti non fit injuria* will not bar an action under this statute. *Buckmaster* v. *McElroy*, 20 Neb. 557, 31 N. W. 76. This position has been criticized by textbook writers. See BLACK, INTOXICATING LIQUORS, § 291, and cases there collected. And in general, under similar statutes, recovery has been refused to the drunkard himself for damages caused by his own intoxication. *Lenand* v. *Linck*, 71 Ill. App. 358; *Brooks* v. *Cook*, 44 Mich. 617. Also the wife who consents to the purchase of the liquor has been barred. *Engleken* v. *Hilger*, 43 Iowa 563; *Rosencrantz* v. *Shoemaker*, 60 Mich. 4, 26 N. W. 794. *Contra*, *Eays* v. *Lilly*, 217 Ill. 582, 75 N. E. 552 (where, however, this fact was allowed to mitigate damages). At common law it was not a tort to sell intoxicating liquor to an able bodied man. *Cruse* v. *Aden*, 127 Ill. 231, 20 N. E. 73. And a statute which creates a new remedy must ordinarily be construed as subject to the general rules as to recovery at common law. *Western Union Tel. Co.* v. *McDaniel*, 103 Ind. 294, 2 N. E. 709. Upon this reasoning the Nebraska cases seem wrong. But, on the other hand, the Nebraska result is correct if the clear intent of the legislature was to include the drunkard himself among those protected. Where a statutory duty of protection to those he employs has been imposed upon an employer, precisely this result has been reached, for the employee is not allowed to bar himself by assuming the risk. *Narramore* v. *Cleveland Ry. Co.*, 96 Fed. 298. It has been urged in explanation of this that the civil liability is created to insure achieving the desired result, because to bar suit by the employee will render the statute nugatory. See 26 HARV. L. REV. 646. This reasoning, however, does not apply to the liquor statutes, since these statutes, by giving every injured member of the community the right to sue, provide the required deterrent. And furthermore, it is difficult to believe that the legislature set out deliberately to create new affirmative rights in favor of drunkards. For further discussion of what statutory torts are barred by consent, see 25 HARV. L. REV. 463.

CONSTITUTIONAL LAW — PERSONAL RIGHTS — CONSTITUTIONALITY OF NEGRO SEGREGATION IN SEPARATE RESIDENCE DISTRICTS UNDER THE FOURTEENTH AMENDMENT. — An ordinance of the city of Baltimore provided that no white persons or negroes should thereafter reside in blocks then occupied for residences exclusively by the other race. *Held*, that the ordinance does not